



## APPENDIX 1.

### Rules of New Jersey Supreme Court (Edition 1929).

#### II. OF ATTORNEYS AND COUNSELLORS.

2. No person within the age of twenty-one years, or who is not a citizen of the United States, shall be recommended to the governor for license to practice as an attorney-at-law in this State. (Rule 1, 1905, modified.)

3. No person shall be recommended for license as an attorney unless he shall first submit himself to an examination as hereinafter provided, and thereupon give satisfactory evidence of his learning in the law, and his knowledge of the practice thereof as established in this State. (Rule 2, 1905.)

4. No person shall be admitted to examination for license as an attorney unless he first produce to the Board of Bar Examiners, in the manner prescribed by its rules, satisfactory evidence:

(a) Of good moral character;

(b) That two months prior to taking his bar examination he posted in the office of the Clerk of the Circuit Court of the county in which he served his clerkship, or in which he resides, a notice of his intention to apply for admission to the bar;

(Note.—This notice must be given for the time at which the examination is actually taken, and for every examination that is taken. If an applicant does not take the examination at the time mentioned in the notice, or if, having failed, he takes the examination more than once, he must post a new notice.)

- (c) That he has served a regular clerkship in this State with some practicing attorney-at-law of this court, who is also a counsellor-at-law, for three years. Any portion of such time, not exceeding twenty-four months in all, spent before or after the beginning of the clerkship in regular attendance upon the law lectures in some law school, of established reputation, in the United States, or in the study of the English law at an institution of established reputation in a country where English is the common language of the people, shall be allowed in lieu of an equal period of such latter clerkship. The service of such clerkship in every case shall be evidenced by a certificate from the person or persons with whom such clerkship shall be served, or other satisfactory evidence, that the applicant has not, at any time during said clerkship, been engaged in, or pursued, any business, occupation or employment incompatible with the full, fair and bona fide service of his clerkship. If he has served in any department of the military or naval service of the United States during the late war with Germany, two years' clerkship shall be deemed sufficient; and any portion of time, not exceeding sixteen months, spent at law school, or in the study of English law as hereinbefore provided, shall be allowed in lieu of an equal period of such clerkship. (Amended June 5, 1918, and further amended June 5, 1923.)

(Note.—The clerkship must be served in an office within the State of New Jersey. If the three-year period of clerkship expires after the bar examinations are held, but within four weeks thereafter, the applicant may take the examination, but cannot be sworn in until the full period has expired.)

- (c-2) The time of study allowed in a law school must be proved by the certificate of the duly authorized

officer of said school, under the seal of the said school, if such there be, in addition to the affidavit of the applicant, which must, also, state the age at which the applicant began his attendance at such law school. Said certificate and affidavit must, also, show that said applicant took the prescribed course of instruction required at said school for the degree of Bachelor of Laws while in attendance thereat. (March 3, 1919, as amended June Term, 1919.)

(Note.—Only the time actually spent in attendance at the law school can be counted.)

- (d) That at least three years (or two years when the proviso of paragraph c is applicable) before taking his bar examination he had graduated or had duly passed his final examination for graduation in a college or university, or in a public high school of this State, or in a public high school of another State, or a private school or academy approved by the Board of Bar Examiners, or that he had passed an examination equivalent to that for graduation in a public high school of this State, to be held by officers of the public schools, the times, places and character of which examination shall be determined by the State Board of Education with the concurrence of the Board of Bar Examiners. (Amended June 5, 1918.)
- (e) That at the commencement of the clerkship above required, he filed in the office of the Clerk of the Supreme Court the certificate of the counsellor with whom he is to serve, that such clerkship has begun. No clerkship shall be deemed to have commenced until such certificate shall have been filed as aforesaid; and the period of clerkship shall be computed from the actual filing of such certificate and not otherwise. (Rule 3, 1905, as amended June 5, 1923.)

- 5.(a) No attorney from another State shall be recommended for license to practice in this State unless he shall first submit himself to the bar examination; nor shall he be admitted to such examination unless the time during which he has served a clerkship with a practicing attorney in this State, or another State who is also a counsellor-at-law and the time during which he has practiced in another State, shall amount to three years in the whole, nor unless he has complied with paragraphs a, b and d of rule 4, except that he may take the examination last mentioned in paragraph d, at any time before taking the bar examinations.
- (b) And except further that when such attorney has been actively engaged in the practice of law in such other State for a period of not less than ten years, a compliance with paragraph d of rule 4 shall not be required of him.
- (c) Regular attendance upon law lectures in a law school of established reputation for a period not exceeding twenty-four months may stand in lieu of an equal period of clerkship. (Rule 4, 1905, as amended June 5, 1923.)
- (d) (Abrogated October, 1927.)
- 6.(a) No person shall be recommended for license to practice as a counsellor-at-law in this State unless he shall first submit himself to examination and give satisfactory evidence of his knowledge of the principles and doctrines of the law, and of his abilities as a pleader; nor shall any be admitted to such examination until he shall have practiced in this court as an attorney for the space of three years at least; or, if he be an attorney who originally practiced in another State, until the whole period during which he shall have practiced law

as an attorney in this State and in such other State, shall be at least six years, of which period the last year must have been spent in practice in this State. (Rule 6, 1905.)

- (b) The examination fees prescribed by P. L. 1926, Chapter 116, being \$25.00 for the first examination for attorney's or counsellor's license, and (failing to pass the first) \$15.00 for each subsequent examination, shall be paid to the Clerk of the Supreme Court by each applicant, at least forty days before the examination and no applicant's name shall be placed upon the list of those entitled to take the Bar Examinations until his examination fee is paid. (February, 1919, as amended May, 1926, and February, 1929, and December, 1929.)
- (c) When applicant for attorney has taken an examination and failed in same, he must, before he can take another examination, file with the Clerk proof that he has served a full, fair and bona fide clerkship of six hours each day, Saturdays excepted, in the office of an attorney-at-law, who is also a counsellor, during the time intervening since his last prior examination. (December, 1924.)

## APPENDIX 2.

### Rules of New Jersey Supreme Court.

Relating to Admission of Attorneys and Counselors\*  
Adopted February 14, 1931

2. The Court shall appoint a Board of Bar Examiners consisting of three counselors to hold office during the pleasure of the Court. Said Board shall conduct the examinations for attorneys and counselors, and subject to the approval of the Court, prescribe rules, forms and procedure relating to admission and disbarment.

3.(a) No person shall be recommended to the Governor for license as an attorney or counselor until after examination as hereinafter provided and compliance with these rules.

3.(b) No person shall be admitted to the examination for attorney unless he shall be at the time of such examination above the age of twenty-one years, a citizen of the United States of America and shall have been a resident of this State for at least six months immediately preceding such examination.

4. No person shall be admitted to the examination for attorney unless he first produces to the Board of Bar Examiners in the manner prescribed by its rules satisfactory evidence:

(a) That he is of good moral character.

(b) That not more than three and not less than two months prior to taking any examination for attorney,

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\* For the exclusive power of the Supreme Court to prescribe the examinations upon which persons may be admitted to practice in it, and for a historical review of the subject, see *In re Branch*, 41 Vr. 537, 576.

he filed with the Clerk of this Court a notice of intention to apply for admission to the bar. Said clerk shall, at least forty days prior to the date of the examination, file with the clerks of the Circuit Courts of the counties a list of those in the respective counties applying for admission to the bar, which clerks shall immediately after receipt of said lists, post the same in their respective offices. The clerk of this Court shall also publish twice, once in each week for two consecutive weeks, in a newspaper published in each county, a list of those applying for admission in the respective counties, the first publication to be at least forty days prior to the date of the examination. The Board of Bar Examiners shall prescribe the form of posting and publication under this rule.

(c) That at least three years before taking any examination for attorney he had graduated from or had duly passed his final examination for an academic degree in a college or university approved for this purpose by the State Board of Education, or had successfully completed two full years attendance and study at a college or university approved for this purpose by the State Board of Education.

(d) Whenever approval by the State Board of Education is required under this rule, such approval shall not be effective unless concurred in by the Board of Bar Examiners.

(e) Every applicant, before entering upon his office clerkship, as hereinafter provided, shall procure from said Board of Education, and file in the office of the Clerk of the Supreme Court, a law student's qualifying certificate showing that the requirements of this rule have been complied with.

5(a) All applicants shall be required to serve office clerkships of three calendar years before the date of



an examination taken by such applicants. A portion of such three-year clerkship, not exceeding twenty-four months in all, spent during such three-year period in regular attendance, at an approved law school, shall be allowed in lieu of an equal period of office clerkship, provided the candidate shall have pursued and successfully passed during his period of attendance at said law school, all of the courses required of a candidate for a degree therefrom during such attendance. Under this provision no credit shall be given for less than eight months, or multiples thereof, of law school work successfully completed.

(b) All office clerkships shall be served in an office or offices within this State with a practicing attorney or attorneys of this Court who are also counselors. No more than two clerks shall be registered with any counselor, unless upon application by such counselor to the Board of Bar Examiners, reasonable necessity be shown for additional clerks, in which case said Board of Bar Examiners may authorize the registration of more than two clerks.

(c) The service of such clerkship shall be evidenced by a certificate from the counselor or counselors with whom such clerkship shall have been served, and by further evidence satisfactory to the Board of Bar Examiners if required by them, that the applicant has been in regular daily attendance in the counselor's professional business for at least six hours a day during the usual office hours of the day (Saturdays excepted), and has not at any time during said clerkship been engaged in, or pursued, any business, occupation or employment incompatible with the full, fair and bona fide service of such clerkship.

(d) The time of study allowed in a law school shall be proved by the certificate of the duly authorized officer of said school, in addition to the affidavit of the ap-

plicant which must also state the age at which the applicant began his attendance at such law school. Said certificate and affidavit shall also show that said applicant took and successfully completed as aforesaid the work for the period for which credit is sought, which in no case shall be less than a full school year of not less than eight months.

(e) At the commencement of the office clerkship required by these rules, an applicant shall file in the office of the Clerk of the Supreme Court the certificate of the counselor with whom he is to serve, that such clerkship has begun. No office clerkship shall be deemed to have commenced until such certificate shall have been filed as aforesaid; and the period of office clerkship shall be computed from the actual filing of such certificate and not otherwise.

6. No attorney from another State shall be recommended for license to practice in this State unless he shall have been a resident of this State for at least six months prior to his taking the examination for admission to the bar and unless he shall have taken and passed such examination, nor shall he be admitted to such examination unless he is an attorney in good standing in another State and shall have been entitled to practice in the highest Court of another State for at least five years, nor unless he has complied with the provisions of rule 4 hereof; provided, however, that when such attorney shall have been actively engaged in the practice of law in another State for a period of at least ten years, compliance with the requirements of rule 4 relating to academic qualifications shall not be required.

7. No person shall be recommended for license to practice as a counselor unless he shall have taken and passed the examinations therefor; nor shall any person be admitted to such examination until he shall have

resided in this State and practiced in this Court as an attorney for the space of three years at least.

8. The examination fees prescribed by P. L. 1926, Chapter 116, being \$25.00 for the first examination for attorney's or counselor's license, and (failing to pass the first) \$15.00 for each subsequent examination, shall be paid to the Clerk of the Supreme Court by each applicant at least forty days before the examination; and no applicant's name shall be placed upon the list of those entitled to take the bar examinations until his examination fee is paid.

9(a) When any applicant, including those applying under rule 6, has taken an examination for attorney and failed in the same, he must, before he can take another examination, file with the Clerk of this Court proof that he has served a clerkship of at least four months during the time intervening since the taking of his last prior examination.

(b) No applicant for an attorney's license who has or shall have failed in four examinations shall be admitted to any examination thereafter.

10(a) The examination for counselor and attorney shall be written and the examination papers shall be so identified that the names of the candidates examined cannot be known to the examiners before they have announced the result of the said examinations.

(b) There shall be two examinations annually for attorneys and counselors, in the months of April and October respectively. The time and places of the examinations shall be fixed by the Board of Bar Examiners, subject to the approval of the Court.

(c) The Board shall report to the Court, with their recommendations, the names of those candidates whose

qualifications accord with these rules, and who shall have passed the examinations successfully.

(d) The Board shall make public the topics and books upon which applicants will be examined, and from time to time shall make public suggestions for the information and guidance of students as the Board may think will tend to promote their studies.

(e) The Court shall appoint, in each county, a committee on character and fitness, to consist of at least three counselors, resident or practicing in said county. It shall be the duty of the said committee to investigate the character and fitness of all candidates for admission as attorney, resident in such county; and no person shall be recommended for license until he shall have received the approval of the said committee. It shall be the duty of the several committees on character and fitness, so far as possible, to keep under observation all applicants who have filed their certificates of commencement of clerkship in the Clerk's office, resident or serving clerkships in their respective counties, from the time of the filing of such certificates down to the time of their admission; and no applicant for admission as an attorney shall be licensed until he shall have filed in the office of the Clerk of this Court the certificate of the committee on character and fitness having such applicant under observation, that he is of good moral character and generally fit and has satisfactorily served the clerkship required by these rules.

11. The foregoing rules, being numbers 2 to 10 inclusive, shall not be deemed to affect the rights of candidates for admission as attorneys who have filed their certificate of commencement of clerkship or have matriculated in an approved law school, prior to the date of promulgation, to wit, February 14, 1931, and such candidates shall be deemed to be under the rules of this Court previously existing, except that these rules where applicable to attorneys of other States, shall take effect Oct. 1, 1931.

(ABROGATED JULY 5, 1940.)

### APPENDIX 3.

New Jersey Constitution, Article I (Bill of Rights):

Section 1. "All men are by nature free and independent, and have certain natural and unalienable rights, among which are those of enjoying and defending life and liberty; acquiring, possessing and protecting property, and of pursuing and obtaining safety and happiness."

New Jersey Constitution, Article VI:

Section 1. "The judicial power shall be vested in a court of errors and appeals in the last resort in all causes as heretofore;"

New Jersey Revised Statutes (Public Laws 1939, Chap. 140):

Section 2:20-9. "No fee to any attorney, proctor, solicitor or counsel shall be allowed and no allowance by way of such fee shall be made in any cause, matter or proceeding in any court in this state, except for or on account of actual services rendered by a member of the bar of this state engaged in the practice of law and maintaining an office in this state; provided, however, that in any cause, matter or proceeding requiring the services of an attorney, proctor, solicitor, counsel or other member of the bar of any foreign jurisdiction, the court, in allowing a fee or making an allowance by way of fee, as aforesaid, shall take cognizance thereof and shall make allowance therefor as though actually rendered by the member of the bar of this state by whom such services were engaged."

Excerpt from New Jersey Law Journal (1917), p. 164:

For the first time in many years the Supreme Court has reversed the decision of the Examining Board, and certified the papers of a student over the failure marks of the Examiners. The details of the case have not been

made public, except that the successful applicant for admission is known to have been Mr. Bayard R. Kraft, son of Prosecutor William J. Kraft, of Camden, who had failed twice before to pass the test of the Board of Examiners. It would be interesting to know just why the exception was made, but we do not doubt that it was founded upon sound reasons. It is very unlikely, however, that the Supreme Court will often review the discretion of the Examiners hereafter, since, whatever the basis for the finding in this case, if it once becomes understood that such a review may be easily obtained, there will be no end to the applications for review to be made to the Court. It is well known that about half, and sometimes more of the applicants for admission to the Bar in this State fail to succeed at their first examination, and if, in the course of a year, about a hundred or more young men, through their attorneys, apply to the Supreme Court for an examination of the marks against them, it is easy to be seen to what this will lead.

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#### APPENDIX 4.

##### RULES OF THE NEW YORK COURT OF APPEALS FOR THE ADMISSION OF ATTORNEYS AND COUNSELLORS AT LAW

(adopted February 20, 1929; in effect March 15, 1929).

##### Rule II: Admission without examination.

The following classes of persons may in the discretion of the Appellate Division be admitted and licensed without examination:

1. Any person admitted to practice and who has practiced five years as a member of the bar in the highest law court in any other state or territory of the American Union or in the District of Columbia.

## APPENDIX 5.

(Reprint of Points II and IV as contained in the Brief of William G. Wall, Appellant, filed with the New Jersey Court of Errors and Appeals in support of his appeal, No. 41, February Term, 1940.)

### POINT II.

**Rule 11 of the Supreme Court Rules, so far as it is applied against the Appellant as an attorney from another state, is unconstitutional.**

Rule 11, regarding admission to the Bar of New Jersey (Rules of Supreme Court and of State Board of Bar Examiners, Revised Edition July 1931) is set forth:

"The foregoing rules, being numbers 2 to 10 inclusive, shall not be deemed to affect the rights of candidates for admission as Attorneys who have filed their certificate of commencement of clerkship or *have matriculated in an approved law school*, prior to the date of promulgation, to wit, February 14, 1931, and such candidates shall be deemed to be under the rules of this Court previously existing, *except that these rules where applicable to attorneys of other states, shall take effect Oct. 1, 1931.*" (Italics ours.)

The appellant argues that since he matriculated in an approved Law school in September 1925 (S. C., p. 23), graduating therefrom in 1928 and was admitted to the New York Bar in 1929, he is not governed by Rules 2-10 (Rules, 1931) and particularly Rule 9(a) thereof, but by the Rules previously existing (Rules, 1929) and that the portion of the aforementioned Rule 11 applying to Attorneys from other States is violative of the Fourteenth Amendment of the Federal Constitution and the Constitution of the State of New Jersey and unconstitutional, because:

1. It denies the Appellant the equal protection of laws guaranteed by the Federal Constitution and Bill of Rights

in that it does not give equal security to or impose an equal burden on everyone similarly situated in a particular class.

*In re Van Horne*, 74 N. J. Eq. 600, 601, 602;  
*Truax v. Corrigan*, 257 U. S. 312, 332, 333;  
 16 C. J. Sec., page 988.

2. It grants an exemption which has the effect of conferring on certain persons privileges and immunities not granted to other persons similarly situated.

*In re Branch*, 70 N. J. L. 537, 566;  
 16 C. J. Sec., page 924;  
 12 C. J., 1117 n. 63.

3. It makes an unreasonable and arbitrary discrimination between different persons of a particular class and the classification rests on no substantial difference whatsoever.

*Raymond v. Teaneck*, 118 N. J. L. 109, 111;  
*In re Branch*, 70 N. J. L. 537, 566;  
*Weimer Storage Co. v. Dill*, 103 N. J. E. 307,  
 313;  
 16 C. J. Sec., pp. 954, 955.

4. Its effect, by placing the arbitrary and unreasonable burden on the Appellant as an Attorney from another State of having to serve a Clerkship for four months under Rule 9 (a) (1931) before being permitted to take a reexamination, deprives the Appellant of the enjoyment of certain inalienable rights and property safeguarded by Art. I, Par. I of the New Jersey Constitution.

A State may impose a reasonable limitation on the right to practice a profession, but an arbitrary and unreasonable discrimination is contrary to law (16 C. J. Sec., p. 930). It has also been held the pursuit of happiness is a natural right embracing the right to pursue a lawful occu-



pation or business, protected by both the Federal and State Constitution.

*Brennan v. United Hatters*, 73 N. J. L. 729;  
*Lucomsky v. Palmer*, 252 N. Y. S. 529, 531;  
*Premier Pabst Sales Co. v. State Board*, 13 Fed.  
 Sup. 90.

As already stated (S. C., pp. 51-56), the petitioner is the holder of a license, of over ten years' standing, to practice in New York as an Attorney and Counsellor at Law. The right to practice law is not only a privilege (*In re Goldstein*, 220 N. Y. S. 473), but a special right (*Matter of Co-operative Law Co.*, 198 N. Y. 479, 483), which, when once acquired, is property (*In re O'Brien's Petition*, 63 Atl. 777, 79 Conn. 46; *Unger v. Landlord's Management Corp.*, 168 Atl. 229, 114 N. J. Eq. 68; *Cummings v. Missouri*, 4 Wall. 277, 320; *Ex parte Garland*, 4 Wall. 333, 379). It is also a personal right, limited to persons of good moral character, with special qualifications ascertained and certified after a long course of study, both general professional, after years of hard labor, and a thorough examination by a State Board appointed for that purpose (*Matter of Co-operative Law Co.* (*supra*); *Bradley v. Fisher*, 80 U. S. 335).

Regarding the right to engage in a lawful occupation or business this Court stated in *Brennan v. United Hatters*, 73 N. J. L. 729, 742:

"\* \* \* the notion is intolerable that a man should not be protected by the law in the enjoyment of property once it is acquired, but left unprotected by the law in his efforts to acquire it."

Upon the foregoing it submitted that that portion of Rule 11, so far as it relates to Attorneys from other States is unconstitutional and void and that Appellant comes within the Supreme Court Rules existing prior to February 1931.

#### POINT IV.

**Appellant submits his answers on examination present satisfactory evidence of his knowledge of the law and practice established in this state, as prescribed by the rules.**

Rule 3 of the Supreme Court (Rules 1929) is stated:

*"No person shall be recommended for license as an attorney unless he shall first submit himself to an examination as hereinafter provided, and thereupon give satisfactory evidence of his learning in the law, and his knowledge of the practice thereof as established in this State (Rule 2, 1905)."*

Although notified he failed to pass the April 1939 examination, Appellant at all times was authoritatively and undisputably informed "that he had an excellent paper" and, that his rating was so close "that he could have passed or failed" (S. C., pp. 1-2, 53). Appellant is led to believe that his rating was within a fraction of a point of the 267 points requisite for a passing mark. It is upon this ground that he seeks a review as well as for the reason that Rule 3 (*supra*) does not contain the words "pass an examination".

Rule 3 simply requires that the applicant "give satisfactory evidence of his learning in the law, and his knowledge of the practice thereof as established in this State". Appellant submits and rests upon the answers to the Bar examination questions, now presented to this Court (S. C., pp. 25-49) as the "satisfactory evidence" required. Appellant further urges that in all fairness he has fully met the true requirements for admission as an Attorney in this State.

In essence, the *real question* is whether the Appellant is professionally fit to practice as an Attorney in this State.

A point more or less in rating should not be deemed to be so all important. Any slight deficiency in the Appellant's rating is not only supplemented by his ten years' practical experience as a Counsellor at Law in the State of New York, but more than counter-balanced by his knowledge, education, learning and ability, which are the very fundamentals upon which a favorable recommendation is founded. Certainly any assumption that a few points more in average would make anyone, including the Appellant, a better Attorney, is not only unsound, but is inferentially, if not demonstrably, unreal. "*Lex non curat de minimis.*"

It is also contended that "border line" cases involving bar examinations are deserving of consideration, especially where the applicant is given his rating (*Salot v. State Bar of California*, 45 P. (2d) 203). While comity does not compel but merely persuades (*Polychronos v. id.*, 17 N. J. Misc. 250, 255), Appellant submits that, since the State of New York admits on motion and without examination New Jersey Counsellors, who have practiced five years (Rules New York Court of Appeals, Rule II, Par. I), many such members of the Bar of this State today enjoying and profiting by the right to practice in the New York Courts, that the examination paper of the Appellant showing a substantial knowledge of the law is a satisfactory and reasonable compliance with the New Jersey Rules especially in the instant case where admission as an Attorney only, and not as Counsellor, is sought. The Court has granted a sort of equitable relief in matters of this kind (*In re Branch*, 70 N. J. L. 576; S. C., pp. 55, 56).

